

DECISION

12906 PLMII
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194756

DATE: February 20, 1980

MATTER OF: Dr. Clifford A. Watson

DIGEST: Employee of the Department of Agriculture claims a retroactive temporary promotion under Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed, 56 id. 427 (1977) from GS-14 to GS-15 for performing duties of Director, U.S. Grain Marketing Research Center from July 6, 1971, until September 7, 1973. Claim is denied as record shows that the position of Director was not established until July 30, 1973. Principles stated in Turner-Caldwell do not apply where position has not been established. Robert C. Klick, B-193348, April 10, 1979.

By a letter dated March 20, 1979, Dr. Clifford A. Watson questions Certificate of Settlement No. Z-2760450, issued March 15, 1979, disallowing his claim for a retroactive temporary promotion from grade GS-14 to GS-15. We consider Dr. Watson's letter to constitute an appeal of the Certificate of Settlement.

3942- Dr. Watson, an employee of the Department of Agriculture, was designated Acting Director, U.S. Grain Marketing Research Center, effective July 6, 1971. This assignment continued until September 7, 1973. In light of our decision Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed, 56 id. 427 (1977), Dr. Watson filed a claim on June 20, 1977, with the Department of Agriculture for a retroactive temporary promotion from GS-14 to GS-15. The claim was forwarded to GAO for recording pursuant to 4 GAO 7.1.

On April 5, 1978, the Department denied Dr. Watson's claim stating in part:

"It is our conclusion you were reassigned rather than detailed to the Acting Director position, and, in fact, the position was not of a higher grade level. I refer you to the description for Personnel Position No.

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NC556, which you occupied as Research Chemist, GS-1320-14, with duty station Manhattan, Kansas.

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"The position description and the official personnel action assigning you to the position not only documents the assignment was not a detail, as defined above, but also proves your "Acting Director" assignment was appropriately classified at the GS-14 level in that it was included in your official position of record. Thus, since you were properly assigned to a position that included Acting Director duties and that position was a GS-14 rather than a GS-15, your claim for a retroactive temporary promotion and backpay must be denied."

In a letter dated June 9, 1978, Dr. Watson appealed the administrative disallowance of his claim stating:

"* * * [t]he description for Personnel Position No. NC 556 was not the position description that I was assigned under for the period from 1971 to 1973. Rather, the position description that I was assigned and worked under from 1971 to 1973 was that for Position Number MQ 54 (exhibit I). This position description makes no mention of my responsibilities of Acting Director of the USGMRC. Therefore, based on this information and documentation, Mr. Leaman's entire argument and decision is without merit and becomes null and void."

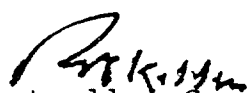
The Claims Division in its action of March 15, 1979, denied Dr. Watson's claim on the basis of an administrative report supplied by the Department of Agriculture. That report indicated that the position of Director, U.S. Grain Marketing Research Center, GS-1320-15, was classified under the Civil Service Research Grade Evaluation Guide (TS-52). In other

words, the grade of that position is determined primarily by the qualifications of the person appointed to the position rather than the administrative duties of the incumbent in the position of Director.

We note that Dr. Watson correctly stated in his letter of June 9, 1978, that he occupied Position No. MQ 54 between 1971 and 1973. Position No. NC 556 was not established until July 17, 1973, approximately 6 weeks before his duties as Acting Director ended. We further note that the position of Director, GS-1320-15, referred to in the administrative report and the position to which Dr. Watson is claiming retroactive temporary promotion, was established on July 30, 1973.

As a general rule, an employee of the Federal Government is entitled only to the salary of the position to which he is appointed, regardless of the duties performed. In Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed, 56 id. 427 (1977), relied upon by Dr. Watson, it was held that when an employee is detailed by an agency to a higher grade position for more than 120 days without obtaining prior approval from the Civil Service Commission (now Office of Personnel Management), the employee is entitled to a retroactive temporary promotion and backpay beginning on the 121st day of the detail. However, the principles set forth in Turner-Caldwell have no application when an employee is detailed to a position that has not been officially established. Robert C. Klick, B-193348, April 10, 1979.

Accordingly, since the position to which Dr. Watson was detailed was established on July 30, 1973, and his detail ended less than 120 days thereafter, we find that Dr. Watson was not entitled to a retroactive promotion. In light of the above conclusion we find that the matter of the classification of the position of Director under the Civil Service Research Grade Evaluation Guide is not controlling with respect to the disposition of Dr. Watson's claim.


Deputy Comptroller General
of the United States